STATEMENT

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Opposition to Minnesota HF 58: Advance Price Notification and Transparency

March 22, 2022

Position: PhRMA respectfully opposes House File 58. PhRMA believes that discussions about the affordability of medicines are important, but the intention of this bill focuses on drug pricing that is not related to what a patient pays for a medicine and prematurely makes changes to the 2020 Prescription Drug Price Transparency Act.

The Pharmaceutical Research and Manufacturers of America ("PhRMA") has concerns with House File 58 (HF58), which amends the 2020 Prescription Drug Price Transparency Act (Act) to require drug manufacturers to report pricing information for prescription medicines with a wholesale acquisition cost (WAC) of $100 or more for a 30-day supply annually and give the insurance commissioner 90 days' written notice prior to increasing the WAC of a prescription medicine in certain circumstances. PhRMA represents the country's 33 leading innovative biopharmaceutical research companies, which are devoted to discovering and developing medicines that enable patients to live longer, healthier, and more productive lives.

Discussions about the cost and affordability of medicines are important. Patients should not need to worry about affording the health care they need. However, the notion that spending on medicines is the primary driver of health care cost growth is false - and ignores cost savings that medicines provide to the health care system overall. Medicines lead to fewer physician visits, hospitalizations, surgeries and other preventable procedures – all of which translate to lower health care costs. New medicines are making crucial contributions to medical advances, changing the direction of healthcare as we know it. This bill is likely to skew discussions of policy issues in ways that are systematically biased against innovation.

Below we outline our primary concerns with HF58. We would welcome the opportunity to discuss further.

Requiring advance notice of price increases could harm consumers, interfere with market competition, and raises constitutional concerns.

HF58 would require manufacturers to provide 90 days advance notification of WAC price increases. In the United States, net prices for brand medicines declined 2.9 percent in 2020.[1] In fact, for the last five years, net price growth for brand medicines has been in line with or below inflation, even as many new treatments reached patients.[2] This is because biopharmaceutical manufacturers give

[1] IQVIA. "Use of Medicines in the U.S.: Spending and Usage Trends and Outlook to 2025." Published May2021.
[2] IQVIA. "Use of Medicines in the U.S.: Spending and Usage Trends and Outlook to 2025." Published May 2021.

substantial rebates and discounts to pharmacy benefit managers (PBMs) and insurers that significantly lower the list price, or WAC, of medicines. The magnitude of these rebates, discounts, and other reductions in price have more than doubled since 2012, totaling $187 billion in 2020.[3] Unfortunately, it doesn't feel that way for patients because insurers don't always share these savings with patients at the pharmacy counter.

Advance notification of WAC price increases creates financial incentives for secondary distributors to enter the pharmaceutical supply chain, thus creating a "gray" market. Gray market distribution networks consist of a number of different companies – some doing business as pharmacies and some as distributors – that buy and resell medicines to each other before one of them finally sells the drugs to a hospital or other health care facility. As the medicines are sold from one secondary distributor to another, the possibility of counterfeit medicines infiltrating the supply of legitimate medicines increases, thereby threatening patient safety. In the past, this type of purchasing has caused great difficulty for hospitals. For example, during medicine shortages, hospitals are sometimes unable to buy medicines from their normal trading partners, usually one of the three large national "primary" distributors, AmerisourceBergen, Cardinal Health, or McKesson. At the same time, hospitals are deluged by sales solicitations from gray market companies offering to sell the shortage medicines for prices that are often hundreds of times higher than the prices normally paid.

PhRMA has challenged the constitutionality of laws requiring advanced notification of price increases in California and Oregon on a number of grounds, including under the First Amendment and the Dormant Commerce Clause. The litigation is pending. If the laws are invalidated, a similar analysis would apply to similar legislation in other states. The U.S. Court of Appeals for the Fourth Circuit recently overturned a Maryland drug pricing law on Dormant Commerce Clause grounds because it regulated the price of transactions that occurred outside of the state.[4]

HF58 prematurely makes changes to the 2020 Prescription Drug Price Transparency Act.

In 2020, the Minnesota Legislature passed the Prescription Drug Price Transparency Act, which requires drug manufacturers to report specific information when the price of a medicine increases by a certain percentage over a period of time. PhRMA has worked in good faith with the Minnesota Department of Health during the past year providing comments to the guidance drug manufacturers must follow for reporting. Initial drug manufacturer reports were not due until March 2022 and it is likely that information from these reports will not be available for review until later in 2022.

HF58 places additional reporting requirements on drug manufacturers before the current reporting requirements have been evaluated and assessed. We would urge you to pause any additional reporting mandates on drug manufacturers until current reporting requirements have been fully implemented and assessed.

For these reasons, PhRMA urges a no vote on HF 58.

[3] Fein, A. "The 2021Economic Report on U.S. Pharmacies and Pharmacy BenefitManagers,"Drug Channels Institute. March 2021.
[4] *Ass'n for Accessible Medicines v. Frosh* ("*AAM*"), 887 F.3d 664 (4th Cir. 2018), *cert. denied*, 139 S. Ct. 1168 (2019).